IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.66 OF 2003

Shri Mihir Yadunath Thatte,]
aged around 44 years, Occupation:]
Journalist, residing at A-5/30,]
Raksha Leela Society, Dattawadi,]
Pune – 411 030.] .. Petitioner

v/s.

1. State of Maharashtra, through the]
Secretary, Urban Development]
Department, Mantralaya, Mumbai-32.]

2. The Pune Municipal Corporation]
having its office at Shivaji Nagar]
Pune 411 005 to be served upon the]
Municipal Commissioner, having his]
office address as above.]

3. M/s. Padmanabh Realties Pvt. Ltd.]
a company registered as per]
provisions of the Companies Act,1956,]
Represented through its Directors]
i) Mr. Avinash M. Bhosale,]
ii) Mrs. Gauri Avinash Bhosale,]
having its place of business at]
Bhosale Pavilion 759/34,]
Bhandarkar Road, Pune 411 004.]

4. M/s. Vanamali Realty Pvt. Ltd.,]
a company registered as per]
provisions of the Companies Act,1956,]
Represented through its Directors]
i) Mr. Avinash M. Bhosale,]
ii) Mrs. Gauri Avinash Bhosale,]
having its place of business at]
Bhosale Pavilion 759/34,]
Bhandarkar Road, Pune 411 004.]

5. M/s. Shashbindu Constructions Pvt.]

Ltd., a Company registered as per provisions of The Companies Act, 1956, represented through its Directors
i) Mrs. Gauri Avinash Bhosale,
ii) Mr. Amit Avinash Bhosale,
having its place of business at Bhosale Pavilion 759/34, Bhandarkar Road, Pune 411 004.]

6. M/s. Yugavrata Developers Pvt. Ltd., a Company registered as per provisions of The Companies Act, 1956, represented through its Directors
i) Mrs. Gauri Avinash Bhosale,
ii) Mr. Amit Avinash Bhosale,
having its place of business at Bhosale Pavilion 759/34, Bhandarkar Road, Pune 411 004.]

7. M/s. Aadidev Constructions Pvt. Ltd., a Company registered as per provisions of The Companies Act, 1956, represented through its Directors
i) Mrs. Gauri Avinash Bhosale,
ii) Mr. Amit Avinash Bhosale,
having its place of business at Bhosale Pavilion 759/34, Bhandarkar Road, Pune 411 004.]

8. M/s. Sahastrajit Realty Pvt. Ltd., a Company registered as per provisions of The Companies Act, 1956, represented through its Directors
i) Mrs. Gauri Avinash Bhosale,
ii) Mr. Amit Avinash Bhosale,
having its place of business at Bhosale Pavilion 759/34, Bhandarkar Road, Pune 411 004.]

9. M/s. Dhardhar Developers Pvt. Ltd., a Company registered as per provisions of The Companies Act,]

1956, represented through its]
Directors]
i) Mrs. Gauri Avinash Bhosale,]
ii) Mr. Amit Avinash Bhosale,]
having its place of business at]
Bhosale Pavilion 759/34,]
Bhandarkar Road, Pune 411 004.]

10. M/s. Shatamurti Realty Pvt. Ltd.,]
a Company registered as per]
provisions of The Companies Act,]
1956, represented through its]
Directors]
i) Mrs. Gauri Avinash Bhosale,]
ii) Mr. Amit Avinash Bhosale,]
having its place of business at]
Bhosale Pavilion 759/34,]
Bhandarkar Road, Pune 411 004.]

11. M/s. Yavuwahan Realty Pvt. Ltd.,]
a Company registered as per]
provisions of The Companies Act,]
1956, represented through its]
Directors]
i) Mrs. Gauri Avinash Bhosale,]
ii) Mr. Amit Avinash Bhosale,]
having its place of business at]
Bhosale Pavilion 759/34,]
Bhandarkar Road, Pune 411 004.]

12. M/s. Maheshan Realties Pvt. Ltd.,]
a Company registered as per]
provisions of The Companies Act,]
1956, represented through its]
Directors]
i) Mrs. Gauri Avinash Bhosale,]
ii) Mr. Amit Avinash Bhosale,]
having its place of business at]
Bhosale Pavilion 759/34,]
Bhandarkar Road, Pune 411 004.]

13. M/s. Trisma Construction Pvt. Ltd.,]
a Company registered as per]
provisions of The Companies Act,]
1956, represented through its]
Directors]

i) Mrs. Gauri Avinash Bhosale,]
ii) Mr. Amit Avinash Bhosale,]
having its place of business at]
Bhosale Pavilion 759/34,]
Bhandarkar Road, Pune 411 004.]

14. Smt. Venubai Santaram Khalate]

15. Mr. Pandurang Santaram Khalate]

16. Mr. Dattatraya Santaram Khalate]

17. Mr. Laxman Santaram Khalate]

18. Mr. Ramchandra Santaram Khalate]

19. Smt. Vandana Bharat Khalate]

20. Mr. Sandeep Pandharinath Khalate]

21.Mr. Madhurkar Sadhu Khalate]
(for himself and as Karta of his HUF)]

22. Mr. Hanumant Sadhu Khalate]
(for himself and as Karta of his HUF)]
Respondent Nos.14 to 23 R/at:]
S.No.92/B, Khalate Sadan, Parvati,]
Pune 411 009.]
And Respondent Nos.3 & 4 are]
represented through their Director]
Mr. Avinash Bhosale & Respondent]
No.5 to 23 are represented through]
their Power of Attorney Holder]
Mr. Avinash N. Bhosale, Indian]
Inhabitant, having its residence at]
Plot No.21, Jijai, Yeshwant Ghatge-]
-nagar Society, Ganesh Khind Road,]
Pune 411 007.] .. Respondents

Mr. D.A. Nalawade for the petitioner.

Mr. R.M. Kadam, Advocate General with Mr. N.P. Deshpande, Assistant Government Pleader for the respondent No.1.

Mr. K.K. Singhvi, senior counsel with Mr. R.G. Ketkar and Mr. R.M. Pethe for the respondent No.2.

Dr. Virendra Tulzapurkar, senior counsel with Mr. T.N. Subramanian and Ms. C.S. Radia for the respondent Nos.3 to 23.

CORAM : R.M. LODHA &
S.A. BOBDE, JJ.

DATE OF RESERVING
THE JUDGMENT : 19TH OCTOBER, 2006.

DATE OF PRONOUNCING
THE JUDGMENT : 21ST NOVEMBER, 2006.

JUDGMENT: (Per R.M. Lodha, J.)

By means of this writ petition, in the nature of Public Interest Litigation, the petitioner challenges the action of the State Government (Respondent No.1) under section 37 of the Maharashtra Regional Town Planning Act, 1966 (for short, `the Town Planning Act') in excluding the plot bearing Survey No.86 (Part) Parvati admeasuring 1.75 hectares from Hill Top Hill Slope Zone (HTHS Zone) and inclusion of the same in the Residential Zone of the city of Pune.

2. The petitioner claims to be renowned freelance Journalist. He is Trustee Secretary of a Trust named Rashtra Seva Pratisthan. He also claims to be a Trustee of Acharya Anand Rishiji Blood Bank at Pune. He claims to be the member of the Managing Committee of an organization “Hridayankit” founded to help cardiac patients from amongst down trodden. According to him, he has all along been in the forefront in Mr. Anna Hazare's drive against corruption and has, on his behalf, led several agitations in Pune. He is resident and tax payer of the Pune Municipal Corporation.

3. The petitioner has set up the case that the development plan for Pune city was published in the month of September, 1982 under the Town Planning Act. That development plan provides for preservation, conservation and development of the areas of natural scenery and landscape amongst other provision; while doing so, it has made special provision in respect of HTHS Zone. The Development Control Rules (DCR) dated 5th January, 1987 stipulates that the HTHS Zone should be reserved in favour of the various department of the government for afforestation and creating recreational places. By the Government notification dated 5th June, 1997, modified DCR were made operational for Pune Municipal Corporation and thereby the additional uses like swimming pools, sports and games, health clubs, cafeteria canteen, amusement park were made permissible in the HTHS Zone providing further that the maximum floor space area shall not exceed 4% of the total plot with ground floor structure without stilts.

4. The petitioner has averred that survey No.86 (Part) Parvati comprises of an area of approximately 22 acres. It also comprises various plots viz. survey No.86/1/1, survey No.86/1/1/2, survey No.86/1/2, survey No.86/2, survey No.86/3, survey No.86/4 and survey No.86/47.

5. The State Government, on 22nd August, 2000, suo motu issued direction to the Pune Municipal Corporation (PMC) under section 37(1) of the Town Planning Act to initiate proceedings for conversion of survey No.86 (Part) admeasuring 1.75 hectares from HTHS Zone to the residential zone. According to the petitioner, the aforesaid directive was issued on the ostensible ground that since survey No.87(Part) as well as survey No.86(Part) are situated at

the same hight and further that survey No.87(Part) has already been included in the residential zone under section 37 of the Town Planning Act and that it was desirable that survey No.86(Part) is also included in the residential zone.

6. Pursuant to the letter dated 22nd August, 2000, the Additional Municipal Commissioner vide letter dated 28th November, 2000 directed the Municipal Secretary of the PMC to table a resolution before the City Improvement Committee and the General Body to seek sanction to invite objections and suggestions from the citizens for excluding survey No.86 (Part) Parvati from the HTHS Zone and including the same in the residential zone and to issue public notice in the local newspapers and after receiving objections and suggestions from the citizens and after going through the same to prepare a report thereof under section 37(1) of the Town Planning Act and submit the same to the Government for its final approval.

7. Accordingly, the Municipal Secretary included the aforesaid subject in the agenda of the meeting of the City Improvement Committee dated 28th November, 2000 as subject No.537/536. The City Improvement Committee on that very day viz. 28th November, 2000 passed the resolution No.536 recommending to the General Body of the PMC for the inclusion of survey No.86 (Part) Parvati from HTHS Zone by following the procedure prescribed under section 37(1).

8. In pursuance of the said resolution dated 28th November, 2000, the proposal was placed before the General Body meeting which was scheduled on 20th December, 2000 vide agenda No.465. The General Body meeting was thereafter

scheduled on 26th December, 2000 and the aforesaid proposal was passed in the said meeting, though it is the case of the petitioner that there has been interpolation in respect of the record pertaining to the minutes of the meeting dated 26th December, 2000 and that, in fact, for the modification of survey No.86 from HTHS Zone to residential zone, no resolution was ever passed by the General Body of the Pune Municipal Corporation.

9. The petitioner has set up the case that the procedure contemplated under section 37 of the Town Planning Act for modification of the final development plan has not been followed at all. According to him, under section 37(1), the direction of the State Government has to be tabled before the General Body for publishing the notice in the official gazette inviting objections and suggestions in this regard. The General Body then has to pass a resolution delegating its power of giving the hearing to the affected persons before a competent official of the Municipal Corporation who thereafter has to hear any such person and submit the proposed modification again to the General Body, which has to deliberate on the same and thereafter, pass a resolution for submitting the proposed modification with the minutes, if any, to the State Government for sanction. The submission of the petitioner is that, while carrying out any modification to the final development plan in pursuance of any direction given by the Government under section 37(1) of the Town Planning Act, the proposal has to come up twice before the General Body; initially for inviting objections and suggestions and subsequently, after hearing the objections and suggestions, to provide opportunity to the General Body to deliberate on the proposed modification, and suggest amendment, if any. According to him, it is only after the said procedure, the resolution has to be forwarded to the State Government for

sanction which has not been done. The petitioner has averred (by way of amendment) that the modification proposal sent by the City Engineer/Municipal Commissioner cannot be considered to be the lawful proposal sent by the Planning Authority to the Government; the hearing to the affected persons was given by the City Engineer and the finding was also recorded by him which he was not empowered to and, thus, there is total violation of the procedure prescribed under section 37(1) of the Town Planning Act for effecting the modification.

10. The petitioner has also averred that the deletion of survey No.86(Part) Parvati from HTHS Zone and its inclusion in the residential zone amounts to change in the character of the development plan which is impermissible under section 37 of the Town Planning Act. He also alleges that change of the user of survey No.86 (Part) Parvati from HTHS Zone to the residential zone amounts to modification of a substantial nature as this amounts to reduction in areas of actual existing site reserved for public amenities.

11. In opposition to the writ petition, on behalf of the PMC, two reply affidavits have been filed. The first reply affidavit was filed on 7th October, 2002 and the other on 11th October, 2002. The reply affidavit dated 11th October, 2002 through the Municipal Secretary deals with the aspects relating to the resolution passed by the General Body on 26.12.2000. It is stated in that reply affidavit that whatever has been stated by the petitioner with regard to the General Body meeting held on 26.12.2000 and the resolution passed in that meeting, are only hear-say and based on the newspaper cuttings. The petitioner was not present in the said

meeting; he could not have been as he was not member of the Municipal Corporation. The Municipal Secretary has given the details as to how the subject was called out by him on 26.12.2000, the members who proposed and seconded the subject, the passing of the original resolution and the amendment at the end of the meeting on 26.12.2000 and the mistake committed by the stenographer in preparing the minutes of the meeting of the General Body. He has stated that the minutes of the meeting of the General Body dated 26.12.2000 were circulated to all the Corporators of the PMC on 24.7.2001 and the minutes were confirmed in the meeting of the General Body held on 27..7.2001. In the said meeting held on 27.7.2001, Mrs. Vandana Chavan was also present. He has highlighted the position that between the meetings of the General Body dated 26.12.2000 and 27.7.200, 4/5 general body meetings were held but nobody raised any objection with regard to the resolution passed on 26.12.2000. Even, at the time of confirmation of the minutes on 27.7.2001, no objection was raised. He has emphasized that the resolution No.417 passed in the General Body dated 26.12.2000 is in accord with law and there is no forgery whatsoever.

12. The other affidavit in reply by the PMC has been filed through the Development Engineer on 7th October, 2002. It is stated that way back on 29.11.1988, the Additional Secretary, Urban Development Department, Government of Maharashtra issued directive under section 37(1) of the Town Planning Act for inclusion of survey No.87/A/1 and survey No.86(Part) of Parvati, Pune in the residential zone. The PMC submitted the proposal to the State Government on 11.3.1992 after following the requisite procedure under section 37 of the Town Planning Act. The State Government vide notification dated 28.5.1992 sanctioned exclusion

of survey No.87/1A/1 from HTHS zone and its inclusion in the residential zone. In so far as survey No.86 (Part) is concerned, no decision was communicated. Non-inclusion of survey No.86 in residential zone led to the filing of the writ petition No.6205 of 1997 by its owners. The said writ petition was disposed of by this court on 29.1.1998 directing the State Government to decide the application dated 8th August, 1997 made by the owners after giving them reasonable opportunity of being heard as well as after considering all relevant documents. It is stated that pursuant to the direction given by this court on 29.1.1988 in writ petition No.6205 of 1997, the hearing was given by the Minister for Urban Development Department on 10.5.1999. The Additional Secretary under letter dated 27.9.1999 informed the PMC that proposal for exclusion of survey No.86(Part) Parvati from HTHS Zone and its inclusion in residential zone is rejected. The Power of Attorney holder of the owners of survey No.86 (Part), then again, submitted a proposal on 19.11.1999 for its exclusion from the HTHS Zone and inclusion in the residential zone. By the letter dated 25.2.2000, the PMC submitted its report opposing such conversion. Thereafter, the parties were heard by the Chief Minister who was holding port-folio of Urban Development Department on 9.3.2000 then the directive was issued under section 37 of the Town Planning Act to the PMC on 22.8.2000 to initiate proceedings under section 37(1) of the Town Planning Act by issuing notice for inviting objections/suggestions from the public within 60 days from the receipt of the said directive and after completion of the formalities under section 37(1), submit the proposal to the State Government for its sanction. In the affidavit dated 7th October, 2002, the Development Engineer has stated that pursuant to the directive dated 22.8.2000, the City Engineer of the PMC put up the submissions before the Additional Commissioner (Special) which

was followed by the proposal dated 28.11.2000 submitted by the Additional Municipal Commissioner (Special) for obtaining sanction of the General Body through City Improvement Committee. The City Improvement Committee passed resolution No.536 on 28.11.2000 recommending to the General Body to initiate proceedings under Section 37(1) of the Town Planning Act. The General Body passed resolution No.417 alongwith the amendment on 26.12.2000 according sanction for following the legal formalities laid down under section 37(1) of the Town Planning Act and submitting the proposal to the State Government for its final sanction. Pursuant to the General Body resolution dated 26.12.2000, the notification in the Maharashtra Government Gazette was published on 11.1.2001. The public notice also appeared in two news papers viz., `Daily Sakal' and `Indian Express' on 1.2.2001 inviting objections/suggestions from the public. The public were called upon to submit their objections/suggestions within one month from the date of publication of the notice in the official gazette. In response thereof, 39 objections/suggestions were received. The hearing was completed on 26.2.2001. Neither the petitioner nor the Corporators from whom the petitioner claims to have obtained information, submitted any objections/suggestions. After completing the requisite formalities, the proposal was submitted to the State Government for final sanction under section 37(1) on 26.4.2001. It is, thus, stated that there has been no violation of the procedure prescribed under section 37(1) for effecting the modification excluding survey No.86 (Part) from HTHS Zone and its inclusion in the residential zone.

13. The State Government in opposition to the writ petition filed its reply affidavit on 28th October, 2002 through Vijay R.

Karulkar, Under Secretary, Urban Development Department, in the reply affidavit stated that after initial rejection of the proposal for the conversion of survey No.86(Part) to the residential zone, the Power of Attorney holder of the owners made another application for conversion of survey No.86 (Part) to residential zone on the ground that the adjacent survey No.87 Parvati has already been converted into the residential zone. The Urban Development Department sent that application to the Director of Town Planning for his report who by his letter dated 21.3.2000 reported that the subject land has a mild slope and is in level with the adjacent survey No.87. The Director of Town Planning, accordingly, recommended inclusion of survey No.86(Part) in the residential zone. The State Government then issued directive to the PMC under section 37(1) of the Town Planning Act on 22nd August, 2000 for converting the land bearing survey No. 86(Part) Parvati from HTHS Zone to residential zone. The PMC then passed General Body resolution No.417 on 26.12.2000 and submitted the modification proposal to the Government for sanction under section 37. The State Government consulted the Director of Town Planning as required under section 37(2). The Director of Town Planning by his letter dated 11.5.2001 recommended that the modification as proposed by the PMC may be sanctioned. It is also stated that in the meanwhile, writ petition Nos.5296 of 2000 and 5820 of 2000 filed by Ujwal Keskar and others were disposed of by the order dated 20th April, 2001 wherein the statement has been recorded on behalf of the State Government that the State Government on its own will not change the zoning of lands falling in HTHS Zone from 38 villages that are newly merged in PMC and for which the development plan is being prepared. Another writ petition No.4805 of 2001 was filed by the land owners of survey No.86 (Part) before this court making a grievance that the State

Government was not taking decision on their representation. By the order dated 9.10.2001, the Division Bench made it clear that the order in the writ petition Nos.5296 of 2000 and 5820 of 2000 shall not stand in the way of the State Government in taking final decision pursuant to the directive of the Government dated 22nd August, 2000 by which process under section 37 of the Town Planning Act had already commenced. In the reply affidavit, the State Government has asserted that the notification changes the zoning of lands which merely admeasures 1.75 hectares which is not substantial area; it is adjacent to the already developed residential area. It is also asserted that the modification in the development plan vide notification dated 4.4.2002 would not change the character of the development plan of the city of Pune and that the area to be converted in the residential zone is not too large to affect the ecological balance. The State Government reiterated that the full procedure contemplated under section 37 has been followed by the State Government as well as Pune Municipal Corporation before issuance of the notification dated 4.4.2002.

14. The petitioner filed the affidavit in rejoinder on 10th March, 2003 in the light of the two reply affidavits filed by PMC through the Municipal Secretary and the Development Engineer (Development Plan) and the reply affidavit filed by the State Government through the Under Secretary, Urban Development Department. In the affidavit-in-rejoinder, the petitioner sought to reiterate that the minutes pertaining to purported resolution No.417 dated 26th December, 2000 are forged and fabricated and that interpolation was carried out in the minutes. He sought to reiterate that the directive issued by the State Government to the PMC under section 37(1) of the Town Planning Act on 22nd August, 2000

to initiate proceedings under section 37(1) of the Town Planning Act by issuing notice/inviting objections/ suggestions from the public as regards the deletion of plot bearing survey No.86(Part) from HTHS Zone to residential zone after the rejection of the earlier representation on 27th September, 1999 was illegal and motivated. He also reiterated in the rejoinder that the notification issued under section 37(2) on 4th April, 2002 suffers from illegality as it has been issued without following due procedure prescribed under the Act.

15. On behalf of the respondent Nos.3 to 23, the reply affidavit was filed on 26.10.2004.

16. By another affidavit filed by Shri Vijay R. Karulkar, Under Secretary, Urban Development Department on 18th February, 2005, it is sought to be clarified that direction by the State Government to the PMC to take proceedings under section 37(1) of the Town Planning Act after rejection of the proposal of the PMC to convert survey No.86 (Part) Parvati from HTHS Zone to residential zone on 27.9.1999 was not politically motivated. It is stated that the PMC way back in or about the year 1987-88 proposed to the State Government for conversion of lands situate at villages Munjeri and Parvati which were included in HTHS Zone in the sanctioned development plan to the residential zone. Thereupon, by the letter dated 12.8.1988, the State Government called for the report of the Director of Town Planning, Pune. The owner of the land bearing survey No.87/1A/1 made the representation to the State Government for conversion of his land from HTHS Zone to residential zone. Survey No.87/1A/1 and survey No.86(Part) adjoins each other. On 29th November, 1988, the State Government directed the PMC to take proceedings under section 37(1) of the Town Planning Act for changing the zoning of survey

No.87/1/A/1 (Part) and 86(Part) from HTHS Zone to residential zone on the basis of the report dated 22.9.1988 submitted by the Director of Town Planning, to the State Government. In his report, the Director of Town Planning himself has stated after visiting the site personally, the resemblance of land survey No.86 (Part) with that of survey No.87/1A/1 and that both these parcels of land are on the same level; that both are adjacent to the well developed residential colonies and that it was expedient to convert the same to the residential zone. The Director of Town Planning recommended such conversion. Thereupon, the PMC also after issuing public notices and after hearing the objectors, by their letter dated 31.3.1992, requested the State Government to issue sanction for deletion of survey No.86(Part) and 87(Part) from HTHS Zone and to include these parcels of land in residential zone. The Director of Town Planning again on 24.9.1992 recommended inclusion of survey No.86 (Part) in the residential zone. However, by notification dated 28.5.1992, the State Government converted the land survey No.87/1A/1 only and not survey No.86(Part) to the residential zone. The owners of land bearing survey No.86(Part) then made an application on 20th June, 1997 to the PMC to sanction lay out in the said land. The PMC expressed its inability to consider the same on the ground that the land was included in HTHS Zone. The owners of survey No.86(Part) then preferred an appeal to the State Government on 15th July, 1997. As the appeal was not heard within reasonable time, the owners preferred writ petition No.6205 of 1997 on the ground of discrimination and prayed for inclusion of their land in the residential zone. By an order dated 29.1.1998, this court directed the State Government to decide the owners' application within two months after hearing them. On 23.4.1998, the Director of Town Planning gave his report recommending the change of zone. The hearing was given on

10.5.1999 pursuant to the order of this court in writ petition No.6205 of 1997. The State Government, on 27.9.1999 intimated the rejection of the proposal for conversion of survey No.86(Part) to the PMC as the State Government at that time thought of allowing some low density development in HTHS zone and the issue in respect of HTHS Zone and its development was before the State Government. After receipt of the intimation of the State Government rejecting the proposal vide decision dated 27.9.1999, the land owners made fresh representation to the State Government on 19.11.1999 for inclusion of their land in the residential zone. Based on that, the State Government issued direction to the PMC under section 37(1) on 22.8.2000 after seeking the views of the Director of Town Planning.

17. It is pertinent to notice here that on September 14, 2006, as soon as the arguments began, the counsel for the petitioner handed in the civil application seeking amendment in the writ petition by incorporating additional paragraphs as set out in the schedule. By the proposed amendment, the petitioner principally sought to set up the specific ground that the modification proposal sent by the City Engineer/Municipal commissioner under section 37 (1) of the Town Planning Act cannot be considered to be lawful proposal sent by the Planning Authority to the State Government. On that day, the Advocate General and the senior counsel for the respondents submitted that the said respondents are not desirous of filing any reply to the civil application. However, they vehemently opposed the civil application seeking leave to amend the writ petition. After hearing the parties, the leave was granted to the petitioner to amend the writ petition and consequently, the amendments were carried out.

18. In response to the amended writ petition, on behalf of the PMC, reply affidavit was filed on 25th September, 2006 through Shri Prashant Madhukar Waghmare, City Engineer justifying the procedure adopted by the PMC in compliance of the direction given by the State Government under sub-section (1) of section 37. They have denied any procedural infirmity in the proposal forwarded to the State Government.

19. In the light of the pleadings of the parties and the submissions (oral and written) made on their behalf, the following questions arise for our consideration and determination:-

i) Whether the conversion of plot bearing survey No. 86 (Part) admeasuring 1.75 hectares from Hill Top Hill Slope Zone to residential zone amounts to change in the character of the development plan of city of Pune?

ii) Whether the directive of the State Government to the PMC under section 37(1) and the notification dated 4th April, 2002 sanctioning the modification in the development plan of the city of Pune by conversion of plot bearing survey No.86(Part) admeasuring 1.75 hectares to the residential zone from HTHS Zone are null and void and without jurisdiction?

iii) Whether the minutes of the meeting of the General Body dated 26.12.2000 pertaining to resolution No.417 are forged and fabricated?

iv) Whether there is violation of the procedure prescribed under section 37(1) of the Town Planning Act and, particularly, the modification proposal sent by the Municipal Commissioner is not

lawful proposal sent by the Planning Authority to the State Government?

Re Question (i):

20. Section 37 of the Town Planning Act empowers the State Government to sanction the modification in the final development plan provided such modification does not change the character of the plan. The words `change in the character of plan' came up for consideration before the Supreme Court in the case of Bombay Dyeing v. Bombay Environmental Action Group and others, 2006(3) BCR 260. The Supreme Court said thus-

> "234. It is also to be borne in mind that whereas the heading of Section 37, prior to amendment, provided for minor modification, the word "minor" has been deleted and in that view of the matter emphasis should be laid on the fact or as to whether such modification alters the basic character of the development of Greater Bombay or not. It would give rise to a further question, namely, as to whether by reason thereof a radical transformation has taken place as regards its basic features, including its identity, which a fortiori would mean as to whether the modified development plan stands unrecognized from the original one. Such a conclusion could have been arrived at if a green area has been eliminated or a green area has been allotted to be used for commercial purposes as was the case in (Bangalore Medical Trust v. B.S. Muddappa & Ors.), (1991)4 S.C.C. 54. In that case, this Court, while construing the Town Planning Act, opined that reservation of open spaces for parks and playgrounds is universally recognized as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanization stating:
>
> > "The statutes in force in India and abroad reserving open spaces for parks and

> playgrounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality..”

235. Here, the Court was considering the question as to whether discretion vested in the executive head had correctly been exercised or not. We are not concerned with such a question in the instant case. If certain number of sites were reserved in the development plan for public purposes and change of user had been effected as for example, whether some of the green areas had been converted to commercial uses, the matter might have been different.

236. The terms `modification' or `change' have often been the subjects of judicial interpretation.

237. The meaning of the expression “change” came up for consideration in Forward Construction Company v. Prabhat Mandal, (1986)1 S.C.C. 100, wherein after noticing its dictionary meaning, it was observed:

> “So, the general meaning of the word “change” in the two dictionaries is “to make or become different, to transform or convert”. If the user was to be completely or substantially changed only then the prior modification of the development plan was necessary.”

238. The question as regard the process of modification of a plan came up for consideration in (Legg v. Ilea), 1972(3) All. E.R. 177 wherein it was stated:

> “the process involved in modification is thus one of alteration and it must be considered how radical the alteration is. The alteration may consist of additions or subtractions or other changes in what is already there or, no doubt, any combination of these. But,

> throughout, there must, I think, be the continued existence of what in substance is the original entity. Once one reaches a stage of wholesale rejection and replacement, the process must cease to be one of modification."

239. Yet again in (Puran Lal v. President of India), (1962)1 S.C.R. 688, it was stated:

> "The word modification means the action of making changes in an object without altering its essential nature or character."

240. Mr. Chagla strongly relied upon a decision of a Division Bench decision [Coram Justice B.P. Singh, C.J. (as His Lordship then was) and Justice Ranjana Desai] of the Bombay High Court in (M.A. Panshikar v. State of Maharashtra through its Urban Development Department & another), 2002(5) Bom. C.R. 318 wherein the Bench observed that Section 37(1-AA) empowers the State to effect changes both minor and even major so long it does not change the character of the plan. In that case itself the Bench held that the modification in question did not bring about a change in the character of development plan on account of the increased FSI specified therein.

241. Reliance has also been placed by Mr. Chagla on (Pune Municipal Corporation and Another v. Promoters and Builders Association and Another), 2004(6) Bom.C.R. (S.C.) 787 : (2004)10 S.C.C. 796 wherein while interpreting Section 37 of the Act a passing reference was made that such changes should be minor in nature. This Court therein did not consider the amendment carried out in the marginal note thereof. In that case, the State Government while allowing a proposal for modification submitted by Pune Municipal Corporation added some words which were challenged on the ground that the same was beyond the powers of the State Government under Section 37. Such a contention was upheld by the High Court. This Court, however, reversed the said decision. In the said decision, the meaning and scope of the phrase "character of plan" did not

directly or indirectly fall for consideration. The expression “minor changes” were used by this Court only for holding that the State Government exercises wide discretion. The said words were not used for determination of the scope and ambit of the phrase “character of the plan”.

242. Reliance has also been placed by Mr. Chagla upon a decision of this Court in (Balakrishna H. Sawant and Others v. Sangli, Miraj & Kupwad City Municipal Corpn. and others), 2005(4) Bom. C.R. (S.C.) 776 : (2005)3 S.C.C. 61 wherein also a case of this nature did not fall for consideration.

243. We may place on record that the total area affected by the change on an average would be approximately 3.07% of the total area of the wards and the mill lands occupy only 0.6% of the entire land area of Bombay.

244. When the question as regard validity or otherwise of the 1991 Regulations came up for consideration before the Bombay High Court, Sujata Manohar, J., (as the learned Judge then was) speaking for the Division Bench in (Nivara Hakk Samiti), W. P. No. 963 of 1991 wherein the writ petitioners also were parties observed that the word “modification” being somewhat indefinite in its ambit must be distinguished from a radical illustration.

245. A development plan is an organic document in the sense that periodic changes are contemplated thereby. A development plan is required to be changed every 20 years. Such changes are to be brought about keeping in view the past experience of the planning authority and the intended future development of the town. While, therefore, interpreting the words “change in the character of plan” the question would be as to whether the change in the character is referable to alteration of the entire plan. The change in the character would, therefore, necessarily mean the change in the basic feature thereof and the entire plan as a whole wherefor the same must be read in totality. In this case, the changes made do not brought about any significant

changes so as to come to a conclusion that its basic features are altered."

21. We shall have to thus see: whether the modification in the development plan of City of Pune vide notification dated 4.4.2002 bring about the loss of identity of the original plan as a whole? By such modification, would the original development plan become unrecognizable? Whether the change of survey No.86 (Part) admeasuring 1.75 hectares to residential zone from HTHS Zone would alter the basic character of the entire development plan? Whether such change would result in disappearance of the distinguishing features of the development plan of the City of Pune? Whether the modification in the development plan vide notification dated 4th April, 2002 converting survey No.86(Part) from HTHS Zone to residential zone can be said to destroy the characteristic feature of the development plan?

22. Town planning changes with times. The development plan is not something which once sanctioned, cannot be touched. Periodic changes in the development plan are even contemplated by law. That the modification in the development plan is permissible is clear from section 37 of the Town Planning Act. However, such modification must not change the character of the development plan. If every modification in the development plan is to be construed as a change in the character of the development plan then section 37 of the Town Planning Act may be rendered otiose and of no avail. That is not the scheme of section 37. The validity of the modification in the development plan has to be tested on the touch-stone of the alteration in the character of the development plan. Once there is no alteration in the character of the development plan by the modification, it is not material whether such modification is minor or major. It is for this reason that the

word `minor' was deleted in section 37 by Act 39 of 1994. Even the fundamental or significant changes in the development plan which do not change the character of the development plan is permissible under section 37.

23. Section 37 of the Town Planning Act provides for the procedure to be adopted for modification of a final development plan. It provides that where the modification of any part, the proposal made in the final development plan is of such a nature that it will not change the character of such development plan, the Planning Authority may, or when so directed by the State Government, shall within 60 days from the date of such direction, publish the notice in the official gazette inviting objections and suggestions from any person with regard to the proposed modification not later than one month from the date of such notice; and shall also serve notice upon all persons affected by the proposed modification and after giving hearing to any such person, submit the proposed modification (with amendments, if any) to the State Government for sanction. Thereafter, the State Government may, after making such enquiry and if it considers necessary, after hearing the persons and with the consent of the Planning Authority and after consulting the Director of Town Planning, by notification in the official gazette, publish the approved modification without changes. If the modification is sanctioned, the final development shall be deemed to have been modified accordingly.

24. That the power of the State Government under section 37(2) of the Town Planning Act with regard to the modification in the final development plan is a delegated legislative power, is no more *res integra*. In the case of Pune Municipal Corporation and another v. Promoters and Builders Association and another, (2004)

10 SCC 796, the Supreme court in unmistakable terms laid down that making of Development Control Regulations and amendments thereof are legislative functions. Section 37 has to be viewed as repository legislative power for effecting the amendments to DCR. The legislative power of amending DCR is delegated to the State Government. Section 37(2) permits the State Government to make necessary modifications in the development plan. The Apex Court further held that in section 37(2), the legislature has not intended to provide any public hearing before according sanction. We may beneficially refer to para 5 of the report as it is:

> 5. Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India v. Cynamide India Ltd., SCC paras 5 and 27. See generally H.S.S.K. Niyami v. Union of India and

> Canara Bank v. Debasis Das.) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. Of Natural Gas Consuming Industries of Gujarat.) Therefore, the view adopted by the High Court does not appear to be correct."

25. That the exercise of the power by the State Government for the modification in the development plan is delegated legislative function seems to be irrefutable. Of course, such delegated legislative power conferred under section 37 for modification in the development plan must not lead to change in the character of the plan. The Supreme Court has said that the delegated legislative power cannot be questioned for violating the principal of natural justice in its making except when the statute itself provides for the requirement and further that while exercising the legislative functions, unless unreasonableness and arbitrariness is pointed out, it is not open for the court to interfere.

26. The counsel for the petitioner relied upon the Division Bench judgment of this court in the case of Rusy Kapadia and others v. State of Maharashtra and others, 1998(2) All M.R. 181. He also relied upon the Division Bench judgment of this court in the case of Harijan Layout Sudhar Samiti and others v. State of Maharashtra, 1997(2) Mah. L.J. 98.

27. While referring to the decision in the case of Rusy Kapadia, the counsel for the petitioner referred to paragraphs 5 and 6 of the report which read thus-

> "5. Prima facie, the State Act does not carry such a provision. The question for our

consideration is, in the absence of any prohibition against the State from disposing off the land earmarked for the park and garden, whether the Government is at liberty to take such decision to dispose off the land for the purpose other than indicated?

6. The submission of the learned counsel before us is that if the Government and Planning Authority has taken a decision strictly in conformity with the provisions of law, in that eventuality the public interest cannot create an inroad to upset the decision. The learned counsel, therefore, mainly invited our attention to Section 37 of the Act and contended that out of the total area which was earmarked for the purposes of garden and part, only 1.5 acre has been dereserved. It is a minor modification. One of the submissions is having regard to the totality of the circumstances and the area it is incidental and since such modification is permissible under Section 37, the de-reservation as ordered by the impugned Notification has to be upheld. Mr. Anturkar, the learned Counsel appearing for one of the respondent-purchasers mainly invited our attention to Section 22-A. He has canvassed before us that the Legislature has provided a handmade definition of the term modification of substantial nature. Taking us through the provision, he contended what is dropped is less than what is prescribed under Section 22-A of the Act. We heard Mr. Anturkar at length on this aspect. Without going into the merit of the contention, we observe, undisputedly Section 22-A has been incorporated in the statue by amendment of 1994. Apparently when the impugned Notification was issued these provisions were not available, but then what is explicit to us is that till the incorporation of this provision the Legislature did not permit the Planning Authority to make any change which is of substantial nature. Similar is a position so far as Section 37 is concerned. Section 37 which was initially providing the minor modification has been deleted and the

> phraseology used after 1994 is only modification. This legislative development is of definite indication. Even otherwise the question before us is whether de-reserving certain portion of land earmarked for the purposes of garden could be a modification. According to us by deserving the planning authority has revoked certain portion from being used for the garden. It is not the case that this was brought about to change any alignment to better serve the purpose. As such the authorities could not successfully resort to Section 37 for issuing the impugned notification."

28. It is pertinent to notice that the aforesaid judgment was carried in appeal to the Supreme Court. The cause title of the appeal before the Supreme Court is Raju S. Jethmalani and others v. State of Maharashtra and others and the judgment is reported in (2005) 11 SCC 222. The Division Bench judgment was set aside by the Supreme Court by observing thus-

> "The High Court after hearing both the parties felt persuaded because of the decisi8on rendered by this Court in the case of Bangalore Medical Trust. But with great respect the Division Bench of the High Court of Bombay did not examine the matter very closely whether the provisions of the Bangalore Development Authority Act, 1976 and that of the Maharashtra Regional and Town Planning Act, 1966 are in pari materia or not. In the case of Bangalore Medical Trust the open space reserved for park under the development scheme was converted into a hospital in favour of a private body by the Development Authority at the instance of the Chief Minister of the State. Therefore, Therefore, this Court examined the provisions of the Bangalore Development Authority Act, 1976 and after considering all those provisions, this Court held that this unilateral act of the Bangalore

Development Authority at the instance of the Chief Minister of the State cannot be countenanced. In that case, the area was reserved for part and playground. Section 38-A of the Bangalore Development Authority Act, 1976 specifically prohibited that the authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities for any other purpose and any disposition so made shall be null and void. Firstly, there is no such provision under the Maharashtra Regional and Town Planning Act, 1966 and secondly, the area which is earmarked for the purpose of park and playground was not owned by a private person. In the present case, though the development plan has been prepared in the year 1966 and the area has been earmarked for the purpose of garden but no proceeding for acquisition of the present plot was ever initiated by the respondent Municipal Corporation or by the State Government. There is no prohibition for preparing the development plan comprising of private land but that plan cannot be implemented unless the said private land is acquired by the Government for development purpose. In the present case, the area comprising in Plot No.438 belonged to the appellants and that no steps were taken to acquire the said land by the State Government or by the Municipal Corporation of Pune and the Municipal Corporation had already expressed their inability to acquire that land and therefore, the said land has been dereserved by the State Government. Therefore, the present case is no semblance to that of Bangalore Medical Trust case."

29. The Supreme Court considered the matter further thus-

"The question is whether without acquiring the land the Government can deprive a person of his use of the land. This in our opinion, cannot be done. It would have been possible for the

Municipal Corporation and the Government of Maharashtra to acquire the land in order to provide civic amenities. But the land in question has not been acquired. We are quite conscious of the fact that the poen park and garden are necessary for the residents of the area. But at the same time we cannot lose sight of the fact that a citizen is deprived of his rights without following proper procedure of law. The period of deferring the quashing of the de-reservation notification for two years by the High Court was perhaps to allow the Government or the Municipal Corporation of Pune to muster up funds so as to acquire the same. But earnest hope was frustrated when no step was taken by the Municipal Corporation. The direction given by the High Court of Bombay that within this period if the respondents (the present appellants) provide necessary area, approximate in size, suitable for the purposes of garden and park as envisaged in the development plan to the satisfaction of the Planning Authority, quashing and setting aside of the impugned notification will not be operative. We fail to understand how the burden can be placed on the appellants that they should provide suitable area in the present locality for using the same as garden or park. Rather, the burden should have been placed on the Municipal Corporation or the State Government instead of putting it on the appellants that they must provide some space for garden and park. This direction, in our opinion, appears to be wholly misconceived and we set aside the impugned order of the Division Bench. Unfortunately, this direction was reaffirmed by subsequent order passed on the clarification application dated 8.9.1999 by the Division Bench and the Division Bench has observed that since the period of two years has already expired, therefore, the notification stood quashed and the Municipal Corporation can proceed in the matter. Since we felt persuaded to set aside the direction given on 4.9.1997 by the High Court putting the burden on the appellants,

> therefore, the subsequent order passed by the Division Bench on 8.9.1999 also cannot be sustained. In this connection, our attention was invited to a recent decision of this Court in the case of Balakrishna H. Sawant v. Sangli, Miraj & Kupwad Municipal Corpn. wherein under an identical situation under the Maharashtra Regional and Town Planning Act, 1966, this Court quashed the reservation in respect of the land owned by a private person. In that case final development plan was published reserving land for a high school and playground owned by the private person. The grievance of the appellant was that the State had not taken any steps to acquire the land within the stipulated statutory period, therefore, the reservation had lapsed. The State Government also admitted that the reservation had lapsed and it had no power to condone the delay. However, the High Court took the view that since the Corporation has taken appropriate steps to acquire the land in question so as to give effect to the reservation, the same cannot be said to have lapsed. The matter came up before this Court by way of special leave petition. The respondent Corporation took the stand that the Corporation has no money for the construction of the high school and playground and therefore, the Corporation does not need the subject land. In this background, this Court set aside the order of the High Court and quashed the reservation in respect of the land in question owned by the appellant and allowed the appeal. Similar is the position in this case also. Since the Government and the Municipal Corporation expressed their inability to acquire the land because of lack of funds, the appellants cannot be deprived of the use of the land. Therefore, the view taken by the High Court by the orders dated 4.9.1997 and 8.9.1999 cannot be sustained and both are liable to be set aside."

30. It would be, thus, seen that reliance on the Division Bench judgment of this court in the case of Rusy Kapadia by the

counsel for the petitioner, is misconceived.

31. In the case of Harijan Layout Sudhar Samiti, the challenge was to the Government resolution whereby the State Government allotted the open piece of land admeasuring 2 acres shown in the development plan in the city of Nagpur as green belt to the Housing Society for the residential purposes. The challenge was also to the allotment order of the area shown as green belt to the Housing Society. It was argued there that the open space of land shown as green belt in the sanctioned development plan of the city of Nagpur could not have been allotted for the housing purposes thereby depriving the general public from the public utility.

32. While dealing with the said challenge, the Division Bench referred to the provisions of the Town Planning Act in general and section 37 in particular and also the provisions of Nagpur Improvement Act, 1936. It was substantially held that the respondents, without following the procedure, converted the land in question earmarked for the green belt/open space for the housing purposes and allotted the same to the housing co-operative society which was not permissible. This is what the Division Bench said, "…. Admittedly, the Planning Authority has not moved in the instant case for abandoning or alteration in the use of the land in question and suggested any alteration ……Admittedly, the respondent Nos.1 to 7 without following the procedures, converted khasra No.37 and 38(1) earmarked for the green belt/open space for the housing purposes and allotted the same to the respondent No.8". Obviously, the modification in the development plan has to be in accord with the procedure prescribed in section 37 of the Town Planning Act. Harijan Layout Sudhar Samiti cannot be said to

have propounded rule of universal application that once the space is earmarked and reserved in the plan, the conversion is not permissible. It could not have been held so on the face of section 37 whereby the State Government has been given power to sanction modification in the development plan that does not change the character of the plan after following the procedure prescribed therein. That the State Government has such power for modification in the development plan under section 37(2) in accord with the procedure prescribed in section 37 is upheld by the Supreme Court in its judgment in the case of Promoters and Builders Association as well as in the judgment of Bombay Dyeing.

33. The counsel for the petitioner heavily relied upon paragraphs 234 and 235 of the report in the case of Bombay Dyeing and sought to build up the argument that by conversion of survey No.86(Part) to residential zone from HTHS Zone would amount to change in the character of the development plan. His submission was that changing the survey No.86 (Part) from HTHS Zone to residential zone would mean extension of no development zone i.e. the green zone and replacement of the same by fully developed zone. According to him, there would be change in the use of the said land from agricultural, forestry and nursery, public parks, play fields, for recreation of all types to the residential use which would mean increase in population density in the said zone from practically zero to an average of 12000 or more per sq. km. (the average population of Pune) which is obviously a change which would change the character of the development plan. He contended that the change of zone from HTHS Zone to residential zone would imply manifold increase in human habitation that would also increase vehicular and other pollution and, thereby,

affect the ecological balance and the quality of life of the residents in the said area.

34. It is true that protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in the development plan. Reserving open spaces, parks and play grounds are the legislative attempt to eliminate the misery caused by urbanisation. It is also true that crowded urban areas tend to spread disease and insufferable burden who live there. The legislative intent by reserving/preserving the open places for public parks, gardens and play grounds have always been for the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the town. In vast development towns having conglomeration of buildings, the open spaces (for public parks, gardens, play grounds etc.) are the necessity. Open spaces are essential feature of modern planning and development as it greatly contributes to the improvements of social ecology.

35. Article 47 imposes the duty on the State to improve public health as it is its primary duty. Article 48A enjoins that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and

healthy environment. It needs no emphasis that there is constitutional imperative upon the State Government and the Municipalities not only to ensure and safeguard proper environment but also to take adequate measures to promote, protect and improve the environment.

36. It is apparent that in the backdrop of the constitutional imperative, as noticed above, in the development plan sanctioned for the city of Pune, the Hill Top Hill Slope zone has been so designated. However, we do not think that by conversion of 1.75 hectares out of survey No.86(Part) Parvati from HTHS Zone to residential zone, the character of the development plan would get changed. Much prior to the impugned change, 0.98 hectares of land out of survey No.87/1/A/1 Parvati which is adjacent to the subject plot has already been converted from HTHS Zone to residential zone way back in the year 1992. Besides that, some smaller area admeasuring 1.28 hectares out of different survey numbers has been deleted from HTHS Zone and converted in residential zone and public and semi-public zone during this period. The conversion of the area from HTHS Zone to residential and public and semi-public zone is hardly 0.03% out of the total area of 1273 hectares. Though HTHS Zone by itself is a distinguishing feature of the development plan of city of Pune, such minuscule change in HTHS Zone cannot be termed to have potency to change the character of the entire development plan. Surely such conversion does not emasculate and deface the basic characteristics of the entire development plan. The modification done by the notification dated 4th April, 2002 does not wipe out the HTHS Zone which is essential characteristic of the development plan. The original development plan despite the modification remains recognizable. Its identity is not lost.

37. We have, thus, no hesitation in holding that the conversion of 1.75 hectares out of survey No.86(Part) from HTHS Zone to residential zone does not amount to the change of character of the development plan of the city of Pune.

Re Question (ii):

38. The case set up by the petitioner is that the direction of the State Government dated 22nd August, 2000 to convert the user of survey No.86(Part) Parvati from HTHS Zone to residential zone, the resolution dated 26.12.2000 passed by the PMC in compliance thereto and the notification dated 4.4.2002 sanctioning the change of user are null, void and without jurisdiction. It was submitted that the State Government had already rejected the earlier proposal of the PMC for deleting survey No.86(Part) from HTHS Zone and its inclusion in the residential zone on 27th September, 1999 and yet, immediately thereafter the State Government issued direction to the PMC on 22.8.2000 to complete the procedure for deleting survey No.86(Part) from HTHS Zone and including the same in the residential zone. It was contended that the direction of the State Government to the PMC under section 37(1) was entered upon to help the builder who subsequently came on the scene.

39. We may immediately observe that the pleadings set up by the petitioner hardly make out a case of malafides. On the other hand, the State Government in its affidavit dated 18.2.2005 has comprehensively answered this challenge. It is clear from that affidavit that the PMC in or about the year 1987-88 proposed to the State Government for conversion of lands situate at villages Munjeri and Parvati which were included in HTHS Zone in the

sanctioned development plan to the residential zone. Thereupon, by the letter dated 12.8.1988, the State Government called for the report of the Director of Town Planning, Pune. After receipt of the report from the Director, Town Planning, the State Government, on 29th November, 1988, directed the PMC to take proceedings under section 37(1) of the Town Planning Act for change of the zoning of survey No.87/1A/1 (Part) and 86(Part) from HTHS Zone to residential zone. It is pertinent to notice that the Director of Town Planning visited the site personally and observed in his report that both survey No.86 (Part) and 87/1A/1 are adjacent to the well developed residential colonies and that it was expedient to convert the same to the residential zone. Thereupon, the PMC after issuing public notices and hearing the objectors, by its letter dated 31st March, 1992, requested the State Government to issue sanction for deletion of survey NO.86(Part) and 87(Part) from HTHS Zone and include them in residential zone. The Director of Town Planning again on 22.4.1992 recommended inclusion of survey No.86(Part) in residential zone. However, by the notification dated 28.5.1992, issued by the State Government under section 37 (2), survey No.87/1A/1 was only converted while No.86(Part) was not converted to the residential zone. The owners of land bearing survey No.86(Part) thereafter made an application on 28th June, 1997 to the PMC for sanctioning the lay out in the said land. The PMC expressed its inability to consider the same on the ground that the land was included in HTHS Zone. The owners preferred an appeal to the State Government on 15th July, 1997. As the appeal could not be heard in the reasonable time, the owners preferred writ petition No.6205 of 1997 before this court on the ground of discrimination and prayed for direction to the State Government for inclusion of their land survey No. 86 (Part) in the residential zone. The High Court by its order dated 29.1.1998, directed the State

Government to decide the application within two months after hearing the owners. The hearing was given to the owners of survey No.86(Part) on 10.5.1999 and on 27.9.1999, the State Government intimated the rejection of the proposal for conversion of survey No.86(Part) to the PMC and the owners as the State Government was considering the proposal at that time to allow some low density development in the HTHS Zone. The owners again made fresh representation to the State Government on 19.11.1999 for inclusion of their land in the residential zone stating therein that they were not accorded due hearing. Then the State Government issued the directive to the PMC on 22.8.2000 to complete the procedure for including the land bearing survey No.86(Part) in residential zone under section 37(1) of the Town Planning Act and submit such proposal to the State Government as envisaged by section 37(1). The PMC then complied with the procedure contemplated under section 37(1) and by its letter dated 26.4.2001, requested the State Government to issue sanction for conversion of survey No.86(Part) in residential zone. The State Government then took necessary decision on 4.4.2002 and notified the conversion subject to the condition that the HTHS portion of the land shall not be cut. The notification was published in the official gazette on 25.4.2002.

40. The petitioner did not lodge any objection to the conversion though he had ample opportunity to do so. The narration of the facts in the affidavit dated 18th February, 2002 which we find acceptable clearly dispels the impression of any malice in issuing the directive dated 22.8.2000 and the issuance of the notification under section 37(2) on 4.4.2002. As to whether there has been any violation of the procedure prescribed under section 37, we shall consider the same while dealing with the

question no.(iv).

41. In what we have discussed while dealing with question (i), the other aspect highlighted by the petitioner with reference to the Articles 21 and 48 of the Constitution does not remain to be of significance. Under section 37(2), the State Government is empowered to exercise the legislative power delegated to it in modification of the development plan which does not change the character of the development plan by following the procedure prescribed therein. Once the procedure under section 37 is found to have been followed and the modification does not amount to change in the character of the plan, the challenge to the directive dated 22.8.2000 and the consequential notification dated 4.4.2000 being violative of Articles 21 and 48 cannot be held to have any merit, if otherwise not arbitrary and unreasonable. The notification dated 4.4.2002 cannot be said to be in violation of the fundamental rights enshrined in Part III of the Constitution of India nor can it be said that the State Government was not competent to exercise the delegated legislative power conferred on it. We have already held that the impugned modification does not change the character of the plan.

42. With regard to the reliance on the judgment of the Supreme Court in the case of Bangalore Medical Trust v. S.P. Mudappa, AIR 1991 SC 1902, by the counsel for petitioner, suffice it to say that in the case of Raju S. Jethmalani, the Supreme court has held that the provisions of the Bangalore Development Authority Act, 1976 which was under consideration in Bangalore Medical Trust and the provisions of the Maharashtra Regional and Town Planning Act, 1966 are not pari materia. For what has been observed by the Supreme Court in the case of Raju H. Jethmalani,

the judgment of the Supreme Court in Bangalore Medical Trust does not help the case of the petitioner while considering the modification of the development plan under section 37 of the Town Planning Act.

43. The counsel for the petitioner also relied upon the judgment of the Supreme Court in the case of V. Gaur v. State of Haryana, 1995(2) SCC 577. In that case, the action under challenge was the direction given by the Government of Haryana to the Municipality to permit use of land defeating the town planning scheme. That case did not relate to the modification of the development plan after following the procedure as contemplated in section 37 of the Town Planning Act. We are afraid, the judgment of the Supreme Court in the case of V. Gaur is of no help to the petitioner.

44. Thus, our answer to question No.(ii) is against the petitioner.

Re Question (iii) :

45. The counsel for the petitioner vehemently submitted that the minutes of the meeting dated 26.12.2000 (Resolution No.417) were forged, fabricated and interpolated. He would submit that the forgery, fabrication and interpolation is inferable from the following circumstances:

a) The ink of the pen used for writing the minutes, in shorthand defers from the ink used for writing the minutes pertaining to Resolution No.417;

b) The sequence and contents of the shorthand

minutes viz-a-viz typed minutes pertaining to Resolution No.417 do not match;

c) The names and signatures of the proposer and the seconder on the actual docket papers and the typed minutes also do not match in respect of the Resolution No.417. The amendment which was added to the resolution No.417 also shows discrepancy as far as signatures of the proposer and seconder are concerned; and

d) Former mayors Mrs. Vandana Chavan and Shri Shewale, former Deputy Mayor Shri Ramdas Pawar and former transport committee chairman Shri Apte wrote a letter on 13th August, 2001 to the PMC demanding an enquiry into the recording of the minutes pertaining to the resolution No.417.

46. The affidavit of Shri Ramdas Pawar was relied upon in this connection. Reference was also made to the letter dated 13th August, 2001 written by Mrs. Vandana Chavan, Shri Shewale, Shri Ramdas Pawar and Shri Apte which was listed in the agenda of the General Body as subject No.354 dated 21.9.2001. The counsel submitted that the resolution No.417 dated 26.12.2000 is highly unreliable and must be ignored.

47. We find that the discrepancy highlighted by the counsel for the petitioner, is duly explained in the affidavit in reply dated 7th October, 2002 filed by the Municipal Secretary. It is not in dispute that the petitioner was not present in the General Body meeting of the PMC on 26.12.2000. He could not have been as he was not

councilor. The allegation of forgery, fabrication and interpolation is apparently hear-say. The affidavit of Shri Ramdas Bhimaji Pawar, one of the Councillors, whose affidavit has been filed by the petitioner alongwith the affidavit in rejoinder may be briefly analysed. He (Ramdas Bhimaji Pawar) was present in the General Body Meeting of the PMC held on 26.12.2000. He has stated that he put his signature as seconder to an amendment to subject No.465 on the agenda of the general body meeting of the PMC of September 2000 in respect of the de-reservation of survey No.86 (Part) Parvati which was never called out nor was it passed. He says that the amendment of the said subject which he signed as seconder prior to the meeting was not tabled nor was it passed on 26.12.2000. According to him, the subjects passed in the particular meeting are not read out, but confirmed as a matter of routine, presuming that the minutes are properly recorded. He admits in his affidavit that subject No.465 on the agenda of the general body meeting of the PMC of September, 2000 in respect of de-reservation of survey No.86(Part) was confirmed on 27th July, 2001. However, according to him, it was so done without reading of the same as per routine practice as such the above mistake skipped his attention. He has stated that on realising that the subject which was not passed has been shown to have been passed, he alongwith others sent letter dated 13.8.2001 and 1.10.2001 addressed to the Municipal Commissioner stating that subject No.465 on the agenda of general body meeting of the PMC of September, 2000 held on 26.12.2000 was never passed but the same was shown to have been passed. They asked the Municipal Commissioner to enquire into the matter and take necessary action. The request was rejected.

48. The affidavit of Shri Ramdas Bhimrao Pawar does not

inspire confidence. It is difficult to believe the explanation of Shri Ramdas Bhimrao Pawar that the subjects passed in particular meeting are not read out but are confirmed as a matter of routine presuming that the minutes are properly recorded. It is also difficult to accept the explanation put forth by him that subject No.465 of the agenda of the general body meeting of the PMC of September, 2000 in respect of the de-reservation of survey No.86(Part) was confirmed on 27th July, 2001 without reading the same as per routine practice.

49. The Municipal Secretary, Shri Ramdas Shankar Jagtap in his affidavit dated 7th October, 2002 has fully explained the facts leading to the resolution No.417 dated 26.12.2000. He has stated that on the basis of the directive dated 22nd August, 2000 issued by the State Government and the earlier proposal submitted by the PMC to the State Government, the City Improvement Committee recommended initiation of the proceedings under section 37 of the Town Planning Act to the General Body. The Municipal Commissioner asked him to include the said subject in the agenda of the general body meeting in the month of December, 2000. Accordingly, the said subject was included in the agenda of the meeting of the general body on 20th December, 2000 as subject No.465. The copy of the said agenda was circulated to all the Corporators of the PMC. However, the meeting of the general body dated 20th December, 2000 was adjourned to 26th December, 2000 on the direction of the Mayor Shri Datta Gaikwad. On 26.12.2000, he has stated that he personally called out the said subject. This is what he says further:

> "I say that the said subject was proposed by Shri Satish Dhotre, belonging to Congress I Party and it was seconded by Shri Sham Satpute,

> belonging to B.J.P. Party. This was duly signed by the Mayor. I further say that, however, amendment was proposed by Shri Suhas Kulkarni belonging to B.J.P. Party and it was seconded by Shri Ramdas Pawar belonging to Congress I Party. This amendment was also duly signed by the Mayor, the original resolution proposed by Shri Dhotre together with amendment suggested by Shri Suhas Kulkarni were discussed and the said resolution was passed alongwith amendment at the end of the meeting. Annexed hereto and marked as Exhibit "4" is a copy of said Resolution No.417 together with amendment suggested. I say that Mrs. Vandana Chavan was not present in the said General Body Meeting."

50. According to the Municipal Secretary, while preparing the minutes, the stenographer Shri Ashok Belekar committed the following mistakes:

i) In the place of the name of the proposer Shri Satish Dhotre, the name of Shri Chandrakant Chhajed was recorded.

ii) The names of Proposer and seconder to the amendment were omitted and not mentioned.

He has stated that the minutes of the meeting of the general body dated 26.12.2000 were circulated to all the Corporators of the PMC on 24.7.2001 and the said minutes were confirmed in the meting of the general body held on 27.7.2001.

51. In the meeting of the general body held on 27.7.2001, Mrs. Vandana Chavan was present. Neither she nor any other Corporator raised objection on 27th July, 2001 as regards passing of the resolution on 26.12.2000. This is also admitted by Shri Ramdas Bhimrao Pawar in his affidavit. It is for the first time on

13.8.2001 that the objections were raised by Mrs. Vandana Chavan and Shri Ramdas Pawar about the correctness of the minutes of the meeting of the general body dated 26.12.2000. Pertinently Mrs. Vandana Chavan was not present in the meeting held on 26.12.2000. Shri Ramdas Pawar was present in the meeting dated 26.12.2000 and he was also present in the meeting held on 27.7.2001 when the minutes of the meeting of the general body dated 26.12.2000 was confirmed and in that meeting, no objections were raised by Mr. Ramdas Pawar about the correctness of the recording of minutes. It seems to us that the objections raised by Shri Ramdas Pawar, Mrs. Vandana Chavan and others with regard to the correctness of the minutes of the meeting of the general body dated 26.12.2000 for the first time on 13.8.2001 are all after thought.

52. Having closely examined the afore-referred affidavits, we find no justifiable reason to disbelieve the affidavit of the Municipal Secretary dated 7th October, 2002 which extensively and comprehensively explains the passing of the resolution No.417 in the general body meeting of 26.12.2000. The Municipal Secretary has emphatically denied any forgery or fabrication of any nature whatsoever with regard to the resolution No.417 passed in the general body meeting dated 26.12.2000. We accept the same and in view thereof, we find no merit in the contention of the petitioner that resolution No.417 passed on 26.12.2000 suffers from forgery, fabrication or interpolation. The contention is devoid of any substance.

Re Question (iv):

53. Mr. D.A. Nalawade, the counsel for the petitioner submitted that the steps for modification have to be taken by the

Planning Authority and since the Planning Authority is a local authority, such decision could only be taken by the general body of the local authority viz. Pune Municipal Corporation. According to the counsel, any steps taken by the Municipal Commissioner or for that matter, by the City Engineer, seeking modification of the development plan under section 37(1) of the Town Planning Act are not permissible in law. He would contend that the general body cannot delegate its power to the Commissioner to such an extent that the Commissioner after hearing the objections and suggestions to the proposal can reformulate the proposal and submit it directly to the State Government without putting the same for approval of the general body. This, according to him, amounts to excessive delegation on the part of the general body of the PMC and is forbidden by law. The counsel submitted that if a statute provides an act to be done by a particular authority and in a particular manner, it should only be done by that authority and in that manner or not at all. He referred to section 152 of the Town Planning Act and submitted that the authority of Municipal Commissioner to perform the functions of the planning authority prescribed in section 37(1) is excluded. His submission was that even with the aid of section 68 of the Bombay Provincial Municipal Council Act, the functions of the Planning Authority as provided in section 37(1) cannot be performed by the Municipal Commissioner much less by the City Engineer. He invited our attention to paragraphs 22B and 22C, 22D and 22E of the writ petition. He also relied upon the judgment of the Supreme Court in the case of Mangulal v. Manilal, AIR 1968 SC 822 and the Division Bench judgment of this court in the case of C.V. Shah v. State of Maharashtra, 2006(3) BCR 216.

54. On the other hand, Mr. K.K. Singhvi, the senior counsel

for the PMC submitted that there is no violation of the procedure prescribed under section 37 of the Town Planning Act. The impugned notification has been issued after following the procedure laid down in section 37(1). He would submit that once the direction is given by the State Government to issue notification for the proposed modification, passing of the resolution by the Planning Authority becomes irrelevant as it has to abide by the direction and issue the required notices and do all the things mentioned in section 37. He, however, submitted that the fact of the matter is that the PMC in its meeting held on 26th December, 2000 accorded sanction for including the subject land in the residential zone deleting it from HTHS Zone; to make changes as per section 37(1) of the Town Planning Act; to issue public notice calling any objections/suggestions from the public as per the directions received to prepare the report as per section 37(1) and send the proposal to the State Government for final approval. Mr. K.K. Singhvi argued that the functions involved in sub-section (1) of section 37 of the Town Planning Act are purely administrative and since the entire executive power of the Corporation vests in the Commissioner, such administrative/executive act can always be got done by the Commissioner with the help of his subordinates. He relied upon the following judgments in this connection:

i) Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court, AIR 1956 SC 285;
ii) State of Bombay (Now Maharashtra) v. Shivabalak Gaurishankar Dube and others, AIR 1965 SC 661;
iii) Jamal Uddin Ahmad v. Abu Saleh Najmuddin and another, 2003(4) SCC 257;
iv) Jaswant Sugar Mills Ltd. Meerut v.. Lakshmi Chand and others, AIR 1963 SC 677;
v) Metropolitan Borough and Town Clerk of Lewisham v. Roberts, 1949 KBD 608;
vi) Regina v. Skinner, 1968 QBD 700; and

vii) Oladehinde v. Secretary of State for the Home Department, 1990(3) All E.R. 393.

55. Mr. K.K. Singhvi referred to the affidavit of Prashant Madhukar Waghmare, City Engineer, PMC dated 25th September, 2006 and submitted that as a matter of practice, for the last several years, all objections/suggestions received by the Municipal Commissioner under section 37(1) have been processed and heard by the City Engineer and no prejudice whatsoever has been caused to any one by the hearing given by the City Engineer as the entire record has been sent to the State Government. He also referred to section 150(1)(e) of the Town Planning Act which provides that no act done or proceeding taken under the said Act shall be questioned on the ground merely of any omission, defect or any irregularity not affecting the merits of the case. He submitted that hearing given by the City Engineer has in no way, affected the merits of the case.

56. The State Government on 22nd August, 2000 directed the PMC to take action under section 37(1) of the Town Planning Act; (i) to include the subject land i.e. Survey No.86(Part) admeasuring 1.75 acres from HTHS Zone to the residential zone; (ii) to issue public notice calling for objections/suggestions from the public within 60 days from issue of such direction and (iii) to complete all the legal actions as per section 37(1) and (iv) to submit the proposal to the State Government for sanction. Pursuant to the said direction, the Additional Municipal Commissioner by his letter dated 20th November, 2000, addressed to the Municipal Secretary, requested him to obtain sanction of the General Body through the City Improvement Committee for including the subject property in the residential zone and to make changes as per section 37(1) of the Town Planning Act. The City Improvement Committee by its

resolution on that very day recommended the general body accordingly. The General Body, in its meeting held on 26th December, 2000 accorded sanction for including the said land in residential zone deleting it from HTHS Zone and making changes as per section 37(1), to issue public notice calling for objections/suggestions from the public as per the direction received, to prepare the report and send the proposal to the State Government for final approval. Pursuant to the decision taken by the General Body of the PMC on 26th December, 2000, vide resolution No.417 (which has not been found by us to be fabricated or forged), the Municipal Commissioner ordered public notice dated 6th January, 2001 to be published in the Maharashtra Government Gazette calling for the objections and suggestions to the proposed modification to the Municipal Commissioner within one month from the date of publication of the notice in the Government Gazette. In the notice, it was also stated that objections and suggestions received during that period shall only be considered and the persons affected due to the modification shall be heard by the City Engineer during his visit hours if requested. The notice also mentioned that the plan showing the proposed modification was available for inspection in the office of the Assistant Engineer (Development Plan) during the office hours. The similar notices were also published in the Daily `Sakal' dated 1st February, 2001 and daily `Indian Express' of the same date. Pursuant to the said notices, 39 objections/suggestions were received. Out of them, seven persons were present for hearing. Four persons raised objections and all the persons who had objected were heard by the City Engineer and report was prepared by the City Engineer. On 26th April, 2001, the Municipal Commissioner forwarded the record to the State Government comprising of the resolution dated 26th December, 2000 passed by the General Body of the Corporation,

the notices published in the gazette and the daily newspaper alongwith the suggestions and objections.

57. We do not deem it necessary to consider the submission of Shri K.K. Singhvi that once the direction is given by the State Government to issue notification for the proposed modification, passing of the resolution by the Municipal Corporation is irrelevant and unnecessary since in the present case, admittedly, the general body of the PMC in its meeting held on 26th December, 2000, after receipt of the direction of the State Government, accorded sanction for including the subject land in the residential zone deleting it from HTHS Zone and to make changes as per section 37(1), to issue notice calling for objections/suggestions from the public and as per the objections received, to prepare the report as per section 37(1) and send the proposal to the State Government for final approval. Obviously, the decision dated 26th December, 2000 taken by the General Body was required to be carried out. That can only be carried out by the executive authority. That the entire executive power of the Corporation vests in the Commissioner does not seem to be in doubt. The executive power that the Commissioner has can be done by the Commissioner either by himself or through his subordinate officers/officials. It is not that all executive acts must be done by the Commissioner himself and not through the help of the subordinate officers.

58. In the case of Pradyat Kumar Bose, the Constitution Bench of the Supreme Court in para 11 of the report observed thus-

> "(11) The further subordinate objections that have been raised remain to be considered. The first objection that has been urged is that

> even if the Chief Justice had the power to dismiss, he was not, in exercise of that power, competent to delegate to another Judge the enquiry into the charges but should have made the enquiry himself. This contention proceeds on a misapprehension of the nature of the power.
>
> As pointed out in `Barnard v. National Dock Labour Board', 1953-2 QB 18 at p.40 (b), it is true that “no judicial tribunal can delegate functions unless it is enabled to do so expressly or by necessary implication”. But the exercise of the power to appoint or dismiss an officer is the exercise not a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof.
>
> It is well-recognized that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides – is the ultimated responsibility for the exercise of such power.”

59. In the case of Shivabalak Gaurishankar Dube, the Supreme Court said thus-

> “(11) Realising the infirmity in the view taken by the High Court, Mr. Pathak attempted to support the decision of the High Court on another ground. He argued that since the enquiry was made by the Talathi and the Mamlatdar under S. 65 and not by the Dy. Collector, the declaration made by the Dy. Collector was invalid. In other words, the argument is that the State Government may have validly delegated its powers under S. 65(1), the Dy. Collector must himself hold

the enquiry and cannot delegate the function of holding such an enquiry any other subordinate revenue officer. There is no doubt that a delegate who has received the authority from the principal cannot, in turn, delegate his own authority to a delegate of his own, but there is hardly any question of delegation by a delegate in the present case. All that S. 65 (1) requires is that the State Government and therefore its delegate may after making such enquiry as it thinks fit, declare that the management of the land shall be resumed.. In other words, in what form the enquiry should be held is a matter left entirely in the discretion of the State Government or its delegate. All that the Dy. Collector has done in the present case is to direct his subordinate officers to collect material relevant to the purpose of the enquiry. The Talathi went on the spot and ascertained as to whether the respondents' lands were lying fallow for the requisite period. He submitted his report to the Mamlatdar. The Mamlatdar in turn made his report to the Dy. Collector. In other words, all that the Dy. Collector has done is to collect the relevant material, so that he can enquire into the question as to whether the lands are lying fallow or not. This procedure does not, in our opinion, involve the question of any delegation at all. The form of the enquiry and its mode are entirely in the discretion of the Dy. Collector. Section 65(1) does not require that the Dy. Collector must himself go to the agricultural fields and enquire on the spot whether they are lying fallow. He may, if he so desires, record evidence and the actual inspection on the spot can be left to some subordinate officer. The report of such local inspection and the record of the evidence collected in that behalf would be forwarded to the Dy. Collector, and that would be the material on which he would hold the enquiry himself. The enquiry is thus held by the Dy. Collector, though the mechanical work of collecting material has been entrusted to a

> subordinate revenue officer. In such a case, we do not see how the principle that a delegate cannot delegate comes into operation.

60. The Supreme Court in the case of Jamal Uddin Ahmad while distinguishing between the judicial and administrative functions of the High Court on the question of presentation of election petition of section 18(1) of the Representation of Peoples Act, 1951 made following observations:

> "13. The functions discharged by a High Court can be divided broadly into judicial and administrative functions. The judicial functions are to be discharged essentially by the Judges as per the Rules of the Court and cannot be delegated. However, administrative functions need not necessarily be discharged by the Judges by themselves, whether individually or collectively or in a group of two or more, and may be delegated or entrusted by authorization to subordinates unless there be some rule of law restraining such delegation or authorization. Every High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be "delegation" as also there can be "authorization" in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and on behalf of the Court so as to aid the Judges in discharge of their judicial functioning. Authorization may take the form of formal conferral or sanction or may be by way of approval or countenance. Such delegation or authorization is not a matter of mere convenience but a necessity at times. The Judges are already overburdened with the task of performing judicial functions and

the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their judicial functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions, which, on any principle of propriety, logic, or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post-decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, often by making a provision in the Rules or under the orders of the Chief Justice or by issuing practice directions, and at times, in the absence of rules, by sheer practice. The practice gathers the strength of law and the older the practice the greater the strength. The Judges rarely receive personally any document required to be presented to the Court. Plaints, petitions, memoranda or other documents required to be presented to the Court are invariably received by the administrative or ministerial staff, who would also carry out a preliminary scrutiny of such documents so as to find that they are in order and then make the documents presentable to the Judge, so that the valuable time of the Judge is not wasted over such matters as do not need to be dealt with personally by the Judge.

14. The judicial function entrusted to a Judge is inalienable and differs from an administrative or ministerial function which can be delegated or performance whereof may be secured through authorization.

> “The judicial function consists in the interpretation of the law and its application by rule or discretion to

> the facts of particular cases. This involves the ascertainment of facts in dispute according to the law of evidence. The organs which the State sets up to exercise the judicial function are called courts of law or courts of justice. Administration consists of the operations, whatever their intrinsic nature may be, which are performed by administrators; and administrators are all State officials who are neither legislators nor judges."

(*See Constitutional and Administrative Law,* Phillips and Jackson, 6th Edn., p. 13) *P. Ramanatha Aiyar's Law Lexicon* defines judicial function as the doing of something in the nature of or in the course of an action in court. (p.1015) The distinction between "judicial" and "ministerial acts" is:

> If a Judge dealing with a particular matter has to exercise his discretion in arriving at a decision, he is acting judicially; if on the other hand, he is merely required to do a particular act and is precluded from entering into the merits of the matter, he is said to be acting ministerially. (pp.1013-14)

Judicial function is exercised under legal authority to decide on the disputes, after hearing the parties, maybe after making an enquiry, and the decision affects the rights and obligations of the parties. There is a duty to act judicially. The Judge may construe the law and apply it to a particular state of facts presented for the determination of the controversy. A ministerial act, on the other hand, may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done (*Law Lexicon,*

ibid., p.1234). In ministerial duty nothing is left to discretion; it is simple, definite duty. Presentation of election petition to the High Court within the meaning of Section 81 of the Act without anything more would mean delivery of election petition to the High Court through one of its officers competent or authorized to receive the same on behalf of and for the High Court. Receiving an election petition presented under Section 81 of he Act is certainly not a judicial function which needs to be performed by a Judge alone. There is no discretion in receiving an election petition. An election petition, when presented, has to be received. It is a simple, definite duty. The date and time of presentation and the name of the person who presented (with such other particulars as may be prescribed) are to be endorsed truly and mechanically on the document presented. It is a ministerial function simpliciter. It can safely be left to be performed by one of the administrative or ministerial staff of the High Court which is as much a part of the High Court. It may be delegated or be performed through someone authorized. The manner of authorization is not prescribed.

15. The High Court, in authorizing an official to receive an election petition either by collective decision of all the Judges or under the directions of the Chief Justice of the High Court, does not “delegate” any of its functions, much less a judicial; it merely “authorizes” an official to petition which is entrusted to the High Court exercisable ordinarily by a Single Judge of the High Court assigned by the Chief Justice for that purpose. Such authorization whether made by Rules of the High Court or by decision of the Court or by an order of the Chief Justice shall hold good unless there be a provision to the contrary in the Act or in the rules framed by the Central Government in exercise of the powers conferred by Section 169 of the Act, which there is none.

61. In the case of Carltona Ltd., the Court of Appeal, observed thus-

> "In the administration of the government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. If they do not do that, Parliament is the place where complaint must be made against him"

62. In the case of Metropolitan Borough and Town Clerk of Lewisham, Bucknill and Denning L. JJ made these instructive observations:-

> "When, therefore, a government department requisitions property itself under reg. 51(1), it is not necessary for the minister himself to consider the matter. It is sufficient if one of the officials of that department brings his mind to bear on the propriety of it. When the government department delegates its functions to a town clerk under reg. 51(5), it is really only putting someone in its place to do the acts which it is authorised to do. The town clerk is, so to speak, an agent of the department, and a sub-agent of the Crown. The delegation to the town clerk is simply administrative machinery so as to enable the administrative function of requisitioning to operate smoothly and efficiently; and, like all administrative functions, the act of delegating can be exercised by any authorized official of the government department."

63. In yet another case, Regina v. Skinner (supra), Widgery, L. J. said thus:

> "It is, however, important in the judgment of the court, to realise the dictum of Lord Greene M.R., which I have read, was not in any way based on the special power of delegation in regulation 51(5). Regulation 51 (5) was never referred to at all, and the dictum of Lord Greene M.R., as it stands, fully recognises that in matters such as those with which we are presently concerned the Minister is not expected personally to take every decision entrusted to him by Parliament. If a decision is made on his behalf by one of his officials then that constitutionally is the Minster's decision. If is not strictly a matter of delegation; it is that the official acts as the Minister himself and the official's decision is the Minister's decision.
>
> That is very much underlined by the second case to which Mr. Wybrants referred

us, *Lewisham Borough Council v. Roberts*. That again was a case under regulation 51 of the Defence (General) Regulations, 1939, and in this instance an officer of the Ministry, a general inspector, a Mr. O'Gara, had on the Minister's behalf purported to delegate to the town clerk of Lewisham certain powers of the Minister under the regulation. In that case the provisions of regulation 51(5) were material because they affected the power to delegate to the town clerk. But so far as any formal delegation by the Minister to his officer, Mr. O'Gara, is concerned, the case makes it abundantly clear that no such delegation was required or had to be proved. The matter is really put, I think in a nutshell in the judgment of Denning L.J. where he said:

> "The first point taken here was that the town clerk was not authorised to requisition this house because his only authority was derived from a letter from an official in the Ministry of Health who could point to no authority from the Minister himself. Now I take it to be quite plain that when a Minister is entrusted with administrative, as distinct from legislative, functions he is entitled to act by an authorised official of his department. The Minister is not bound to give his mind to the matter personally. That is implicit in the modern machinery of government."

Later, in the judgment of Jenkins J., the fact that this is not strictly a matter of delegation between the Minister and his officials is well brought out. Having referred to an argument of counsel based on the principle that this was a matter of delegation, Jenkins J. said:

> "I think this contention is based on a misconception of the relationship between a Minister and the officials in his department. A Minister must

> perforce, from the necessity of the case, act through his departmental officials, and whereas in the Defence Regulations now under consideration functions must, as a matter of necessary implication, be exercisable by the Minister either personally or through his departmental officials; and acts done in exercise of those functions are equally acts of the Minister whether they are done by him personally, or through his departmental officials, as in practice, except in matters of the very first importance, they almost invariably would be done. No question of agency or delegation as between the Minister and Mr. O'Gara seems to me to arise at all."

> Those expressions of principle, which are not doubted in any of the authorities to which we have been referred, make it abundantly clear, in the view of this court, that it was open in this case for the Minister's approval to be expressed by, and indeed made by, an authorised official of his office, such as Mr. Critchley was. If the truth of the matter is that Mr. Critchley made the decision on behalf of the Minister, then it is the Minister's decision within the authorities to which I have referred. Accordingly Mr. Wybrants first contention, that section 7 of the Road Safety Act, 1967, contemplates that the Minister shall personally approve this court must reject"

64. As to whether an action is judicial or purely administrative, the Constitution Bench of the Supreme Court in the case of Jaswant Sugar Mills, Meerut held thus-

> "Question whether a decision is judicial or is purely administrative, often arises when jurisdiction of the superior courts to issue

writs of certiorari is invoked. Often the line of distinction between decisions judicial and administrative is then: but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact: it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, ;he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but, unless in arriving at his decision, he is required to act judicially, his decision will be executive or administrative. Legal authority of citizens does not make the determination judicial: it is the duty to act judicially which invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially. Mukherjea J. in the Province of Bombay v. K.S. Advani, 1950 SCR 621: (AIR 1950 SC 222) observed at p. 670 (of SCR): (at pp.239-240 of AIR) “there cannot indeed be a judicial act, which does not create or impose obligations; but an act, x x x is not necessarily judicial because it affects the rights of subjects. Every judicial act presupposes the application of judicial process. There is well marked distinction between forming a personal or private opinion about a matter, and determining it judicially. In the performance of an executive act, the authority has certainly to apply his mind to the materials before him; but the opinion he forms is a purely subjective matter

which depends entirely upon his state of mind. It is of course necessary that he must act in good faith, and if it is established that he was not influenced by any extraneous consideration, there is nothing further to be said about it. In a judicial proceeding, on the other hand, the process or method of application is different. The judicial process involves the application of a body of rules or principles by the technique of a particular psychological method" vide Robson's Justice and Administrative Law p. 33. It involves a proposal and an opposition, and arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice, vide R. v. London County Council, (1931) 2 KB 215 at p. 233. It is not necessary that the strict rules of evidence should be followed: the procedure for investigation of facts or for reception of evidence may vary according to the requirements of a particular case. There need not be any hard and fast rule on such matters, but the decision which the authority arrives at must not be his `subjective', `personal' or `private' opinion. It must be something which conforms to an objective standard or criterion laid down or recognised by law, and the soundness or otherwise of the determination must be capable of being tested by the same external standard. This is the essence of a judicial function which differentiates it from an administrative function; and whether an authority is required to exercise one kind of function or the other depends entirely upon the provisions of th particular enactment. X x x x x Generally speaking where the language of a statute indicates with sufficient clearness that the personal satisfaction of the authority on certain matters about which he has to form an opinion founds his jurisdiction to do certain acts or make certain orders the function should be regarded as an executive function."

12. It may be observed that Mukherjee J., was on the ultimate decision in the case, in the minority, but the principle enunciated by him had substantially the approval of the Court. Das J., in the same case at p. 719 (of SCR): (At pp. 257 of AIR) observed: “a person entrusted to do an administrative act has often to determine questions of fact to enable him to exercise his power. He has to consider facts and circumstances and to weigh pros and cons in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi judicial function has to do. Both have to act in good faith. A good and valid administrative or executive act binds the subject and affects his rights or imposes liability on him just as effectively as a quasi-judicial act does. The exercise of an administrative or executive act may well be and is frequently made dependent by the Legislature upon a condition or contingency which may involve a question of fact, but the question of fulfillment of which may, nevertheless, be left to the subjective opinion or satisfaction of the executive authority.

13. To make a decision or an act judicial, the following criteria must be satisfied:

1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

2) it declares rights or imposes upon parties obligations affecting their civil rights; and

3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on

> questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact."

65. Applying the tests laid down by the Supreme Court in the case of Jaswant Sugar Mill, the fact that the Planning Authority, pursuant to the direction given by the State Government under section 37(1), is required to publish a notice inviting objections/suggestions within 60 days from the said direction and to prepare a report after hearing the objections of the person affected by the proposed modification and forward the same to the State Government for action under section 37(2), it cannot be said that the acts done by the Planning Authority are judicial/quasi judicial act. Rather, such acts of the Planning Authority are administrative. Once the sanction has been accorded by the General Body of the PMC, after the receipt of the direction from the State Government for including the said land in residential zone deleting it from HTHS Zone and make changes as per section 37 (1), to issue public notice calling objections/suggestions from the public and to prepare a report under section 37(1) of the Town Planning Act and send the proposal to the State Government for final approval, such decision has to be carried out by the executive functionary i.e., the Municipal Commissioner either by himself or through his subordinate officials. In the matter such as this with which we are concerned, the act of the Municipal Commissioner in issuing public notice calling objections/suggestions from the public, the authorisation to the City Engineer to collect objections and hear objectors and prepare the report and the act of forwarding the report to the State Government alongwith complete record are not

the act of agency or delegation but implicit in the discharge of executive functions and all these acts shall be deemed to have been done by the Planning Authority.

66. The counsel for the petitioner heavily placed reliance upon the Division Bench judgment of this court given by the Bench presided over by one of us (R.M. Lodha, J.) in the case of C.V. Shah. Let us examine whether the judgment of this court in the case of C.V. Shah helps the petitioner.

67. Inter alia, the issue for consideration before the Division Bench in the case of C.V. Shah was whether the designation of the land therein for timber industry has lapsed for want of any steps within six months from the date of service of the purchase notice under section 127. In that case, notice under section 127 of the Town Planning Act was served on the Commissioner and not the Planning Authority Though the contention was raised that notice served on the Commissioner was illegal, the Division Bench held that the Commissioner being the principal officer of the Corporation, the notice was served on the Principal Officer of the local authority and, thus, shall be deemed to be duly served on the local authority. Then the question was whether upon receipt of the notice under section 127, the steps were taken by the Planning Authority within six months of the service of the purchase notice. The Corporation in that case set up the following facts to establish that the steps for acquisition were already taken by the Planning Authority before the purchase notice was served under section 127: (i) that the Municipal Commissioner by communication dated 20th April, 1989 addressed to the Municipal Secretary, Pune Municipal Corporation requested the Standing Committee to accord sanction and authorise him to enter into the agreement of

the concerned land; (ii) that the standing committee passed the resolution in the meeting held on 25.4.1989 granting approval and (iii) that on 31.5. 1989, the requisite application for acquisition under the Land Acquisition Act was made to the concerned Collector by the Assistant Municipal Commissioner, Pune Municipal Corporation. Dealing with this stand of the Corporation, the Division Bench held that by the communication dated 20th April, 1989 the Municipal Commissioner only desired the Standing Committee to accord sanction and authorise him to enter into the agreement for acquisition of the subject land and for implementation of the scheme. It was noticed that communication dated 20th April, 1989 did not show that the Municipal Commissioner had taken any decision for acquisition of the concerned land. As a matter of fact, the Municipal Commissioner was found to be of the view that it was the Standing Committee to accord sanction and authorise him to enter into the agreement for the acquisition of the subject land. In that case, nothing could be shown that the Standing Committee had any role to play in authorising or granting sanction for acquisition of the land. Section 68 of the BPMC Act was not found applicable as it did not cover section 127. On facts, it was held that the Municipal Commissioner did not exercise the functions of the Planning Authority as provided in section 127. This is what was concluded by the Division Bench in C.V. Shah:-

> "38. In our conclusion, therefore, the stand of the Pune Municipal Corporation that the steps were already taken prior to the service of the purchase notice is fallacious for more than one reason. For one, there is no decision by the Planning Authority or for that matter by the General Body of the Pune Municipal Corporation, to acquire the subject land and send the proposal for acquisition of the subject

lands to the State Government. The other, communication dated 20.4.1989 from the Municipal Commissioner, Pune Municipal Corporation to the Municipal Secretary, does not reflect any decision by the Municipal Commissioner for acquisition of the subject land but rather it is for seeking approval of the Standing Committee. Then the Commissioner is not competent to exercise the function of the Planning Authority prescribed in section 127 of the MRTP Act, 1966 even by virtue of section 68 of the BPMC Act. The resolution of the Standing Committee passed on 25.4.1989 is of no legal worth. Last but not the least, the letter dated 31.5.1989 of the Assistant Municipal Commissioner (Special), Pune Municipal Corporation addressed to the Collector, Land Acquisition Department, Pune for the acquisition of the subject land under the Land Acquisition Act is without any legal authority. The letter dated 31.5.1989 of the Assistant Municipal Commissioner addressed to the Collector, Land Acquisition Department, Pune is founded on the acquisition proposal approved by the Standing Committee on 25.4.1989 though the Standing Committee had no authority or competence in that regard. The letter dated 31.5.1989 sent by the Assistant Municipal Commissioner to the concerned Collector cannot be held to be an application by the Planning Authority to the Collector for acquisition of the subject land for want of any legal authority to him in that regard. Section 68(2) of the BPMC Act does not improve the case as there is nothing on record to show that the Commissioner has empowered the Assistant Commissioner in this regard by written order after obtaining approval from the Standing Committee. Moreover what Commissioner himself cannot do even with the aid of section 68 (1) of the BPMC Act, a fortiori, the Assistant Commissioner cannot do by virtue of section 68 (2). The proposal dated 31.5.1989, thus, sent by the Assistant Municipal Commissioner to the Collector, Land Acquisition Department cannot be said to be lawful proposal by the Planning Authority to the State Government and for that

> matter, to the concerned Collector for the acquisition of the subject land."

68. We are afraid, the judgment in the case of C.V. Shah has no application in the facts of the present case. As already noticed, in the present case, the Pune Municipal Corporation in its meeting held on 26th December, 2000 accorded sanction for including the subject land in the residential zone deleting it from HTHS Zone and make changes as per section 37(1), to issue public notice calling for objections/suggestions from the public and to prepare a report and send the proposal to the State Government for final approval. The resolution having been passed by the General Body, obviously, its implementation has to be done by the Municipal Commissioner and his subordinate officials and that is what has been done in the present case. It is not necessary that the resolution passed by the general body has to be implemented by the Municipal Commissioner himself who is the Chief Executive Officer. In the very functioning of the Corporation in executive matters, the Municipal Commissioner can always take assistance of his subordinates and, accordingly, he cannot be said to have committed any illegality in directing that persons affected due to the modification shall be heard by the City Engineer and consequently, the City Engineer heard the objectors who were present for the hearing.

69. In the case of Mangulal Chunilal relied upon by the counsel for the petitioner, the Supreme Court held that where the Municipal Commissioner has delegated his powers under section 481(1)(a) to a municipal officer, it is the officer alone who can launch proceedings against person charged with offences under the Act or the rules, regulations or bye-laws made under it. The officer to whom this function is delegated cannot further delegate it

to another. There cannot be any exception to the legal position that the person to whom the function is delegated cannot be further delegated to another. However, asking the City Engineer to hear the objections of the persons affected by modification, it cannot be said for the purposes of section 37(1), that the Municipal Commissioner delegated any power to the City Engineer. There is no delegation of authority by the Municipal Commissioner to the City Engineer. Rather, the Municipal Commissioner has got the executive act done through the City Engineer not as a delegated authority but like any other administrative work to have such work done through the subordinate officials. There is hardly any question of delegation or agency in the present case.

70. For what we have discussed above, we do not agree with the submission of the counsel for the petitioner that pursuant to the directive for modification of the development plan under section 37(1) of the Town Planning Act, the procedure prescribed therein was infracted. The proposal sent by the Municipal Commissioner to the State Government for final action under section 37(2) does not suffer from any legal infirmity.

71. On thorough consideration of all factual and legal aspects highlighted through pleadings and submissions and the discussion reflected hereinbefore, we would conclude thus:

(i) The conversion of plot bearing survey No.86(Part), admeasuring 1.75 hectares from HTHS Zone to residential zone does not amount to change in the character of the development plan for the city of Pune.

(ii)The directive of the State Government to the Pune Municipal Corporation under section 37(1) of the Town Planning Act and the notification dated 4th April, 2002 sanctioning the modification in the development plan are not null, void and without jurisdiction.

(iii)The minutes of the meeting of the General Body dated 26.12.2000 pertaining to the resolution no.417 are not forged and fabricated.

(iv)The procedure prescribed under section 37(1) of the Town Planning Act has been duly followed and the modification proposal sent by the Municipal Commissioner under section 37(1) of the Town Planning Act to the State Government for appropriate action under section 37(2) is lawful proposal and does not suffer from any legal flaw.

72. In the result the writ petition is liable to be dismissed and is dismissed with no order as to costs.

(R.M. LODHA, J.)

(S.A. BOBDE, J.)